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KERAJAAN MALAYSIA & ANOR

v.

YONG MOI SIN

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HIGH COURT MALAYA, JOHOR BAHRU
VERNON ONG LAM KIAT JC
[CIVIL APPEAL NO: (MT1) 12-99-2005]
3 AUGUST 2009

C ***TORT:*** *False imprisonment - Loss of reputation - Damages - Appeal against damages awarded to plaintiff - Whether RM10,500 awarded for false imprisonment fair and reasonable - Whether award of RM150,000 for loss of reputation manifestly excessive - Interest - Whether matter of court's discretion*

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This was an appeal by the defendants against the decision of the learned Sessions Court judge ('SCJ') awarding damages in the sum of RM160,500 together with interests and costs. The plaintiff, a gold merchant, was arrested and taken to his factory where he

E was asked to open a safe which was suspected to contain stolen items. Nothing incriminating, however, was recovered and the plaintiff was released on police bail. Aggrieved, the plaintiff sued for damages for false imprisonment and loss of reputation. The claim was dismissed by the Sessions Court judge and the plaintiff

F appealed to the High Court which was dismissed. Dissatisfied with the decision of the High Court, the plaintiff applied for leave to appeal to the Court of Appeal which was granted. On 18 April 2005, the Sessions Court judge ('SCJ') awarded the plaintiff damages for (1) false imprisonment in the sum of RM10,500; (2)

G loss of reputation ('fitnah') in the sum of RM150,000 and (3) interest on damages at 8% per annum calculated with effect from date of summons to date of satisfaction.

Held:

H **(1)** There was nothing to show that the SCJ's award of RM10,500 for false imprisonment was so extremely high as to make it an entirely erroneous estimate or that the SCJ had acted on wrong principle of law or took into consideration irrelevant matters or failed to take into account relevant

I matters (*KDE Recreation Bhd v. Low Han Ong & Ors*). On the whole, the court found that the award of RM10,500 for false imprisonment was fair and reasonable. (para 5)

(2) The award of RM150,000 for loss of reputation was manifestly excessive. The SCJ had acted on wrong principle of law when he relied on the authorities cited by the plaintiff. Damages for false imprisonment included damages for injury to liberty and injury to feelings. Injury to feelings is that indignity, mental suffering, disgrace or humiliation with any attendant loss of social status. It is another form of loss of reputation. Even where there has been no physical injury, substantial damages may be awarded for indignity, discomfort or inconvenience. Where liberty has been interfered with, damages are given to vindicate the plaintiff's rights even though no pecuniary damages had been suffered. Accordingly, the award of RM150,000 was set aside and substituted with an award of RM50,000. (paras 7 & 8)

(3) Interest is a matter of the court's discretion (item 7, Schedule Courts of Judicature Act 1964; s. 11 of the Civil Law Act 1956; O. 42 r. 12 Rules of the High Court 1980). On the total award of damages allowed in the sum of RM60,500, the court granted interest at 8% per annum calculated from the date of judgment until satisfaction. (para 3)

[Order accordingly.]

Case(s) referred to:

Bandar Nilai Sdn Bhd v. Muthusamy Etti Arunchala Goudan & Ors [2005] 5 CLJ 11 HC ***(refd)***

Chong Fook Kam & Anor v. Shaaban & Ors [1968] 1 LNS 23 FC ***(refd)***

Hock Hua Bank Bhd v. Sahari Murid [1980] 1 LNS 92 FC ***(refd)***

Karpal Singh Ram Singh v. DP Vijandran [2001] 3 CLJ 871 CA ***(refd)***

KDE Recreation Bhd v. Low Han Ong & Ors [2006] 1 CLJ 1097 CA ***(refd)***

Kuan Kwai Choi v. Ak Zaidi Pg Metali [1993] 3 CLJ 555 CA ***(refd)***

Liew Yew Tiam & Ors v. Cheah Cheng Hoc & Ors [2001] 2 CLJ 385 CA ***(refd)***

Mahmod Kailan v. Goh Seng Choon & Anor [1976] 1 LNS 68 FC ***(refd)***

Pang Fee Yoon v. Piong Kien Siong & Ors [1999] 8 CLJ 383 HC ***(refd)***

Panglima Aces Sdn Bhd v. Highway Brick Works (Serendah) Sdn Bhd [2006] 3 CLJ 628 HC ***(refd)***

Penang Port Commission v. Kanawagi Seperumanian [2006] 2 CLJ 480 CA ***(refd)***

Sailajanand Pande, Appelant v. Suresh Chandra Gupta & Anor AIR [1969] Patna 194 ***(refd)***

State of Rajasthan v Rikhabchand AIR [1961] Rajasthan 64 ***(refd)***

Tan Kay Teck & Anor v. The Attorney General [1957] 1 LNS 84 HC ***(refd)***

Thompson v. MPC [1998] QB 498 ***(refd)***

Topaiwah v. Salleh [1968] 1 LNS 161 FC ***(refd)***

A **Legislation referred to:**
Civil Law Act 1956, s. 11
Criminal Procedure Code, s. 62(2), (3)
Rules of the High Court 1980, O. 42 r. 12

Other source(s) referred to:
B McGregor, *Damages,* 16th edn, para 1850 & 1851
Clerk and Lindsell, *Torts* 17th edn, p 12-80

For the respondent - Gobind Singh Deo (WL Shim & Subash with him); M/s Gobind Singh Deo & Co
For the appellant - Mohaji Selamat (Habibah with him) AG's Chambers
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Reported by Suhainah Wahiduddin

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JUDGMENT

Vernon Ong Lam Kiat JC:

[1] This is an appeal by the defendants in court below against the decision of the learned Sessions Court judge given on 18 April
E 2005 awarding damages in the sum of RM160,500 together with interest and costs.

Brief Account Of The Facts

[2] At about 5.30pm on 15 February 1993, the plaintiff, a gold
F merchant was arrested at his factory. He was brought to Balai Polis Tampoi and remanded for the night. On 16 February 1993 the plaintiff, who was handcuffed was taken to his factory. He was asked to open a safe which was suspected to contain stolen items. Nothing incriminating, however, was recovered and the
G plaintiff was released on police bail. Aggrieved the plaintiff sued for damages for false imprisonment and loss of reputation. The plaintiff's claim was dismissed by the learned Sessions Court judge on 20 May 1995. The plaintiff appealed to the High Court. The plaintiff's appeal was dismissed. Dissatisfied with the decision of
H the High Court the plaintiff applied for leave to appeal to the Court of Appeal. Leave was granted by the Court of Appeal on 28 April 1999 on, *inter alia*, the following terms:

> ... Adalah Diperintahkan bahawa pemohon diberi kebenaran untuk
I merayu ke Mahkamah Rayuan terhadap sebahagian keputusan Mahkamah Tinggi Johor Bahru yang diberikan pada 30 haribulan September, 1996 oleh Yang Arif Hakim Dato' Haji Abdul Malik Bin Haji Ishak yang tidak memutuskan bahawa terdapat

ketidakpatuhan dengan peruntukan seksyen 62(2) dan seksyen 62(3) Kanun Acara Jenayah, dengan itu, perayu tersebut adalah berhak ke atas gantirugi dan relif lain bagi pencerobohan ...

[3] After hearing of the appeal on 4 July 2001 the Court of Appeal allowed the plaintiff's appeal. The pertinent terms are as follows:

... Maka Adalah Diperintahkan bahawa rayuan Perayu dibenarkan dan Perintah Y.A. Hakim, Mahkamah Tinggi, Johor Bahru bertarikh 30 September, 1996 adalah diketepikan Dan Adalah Juga Diperintahkan bahawa kes ini dihantar semula ke Mahkamah Sesyen, Johor Bahru untuk penaksiran gantirugi yang layak diterima oleh perayu ...

[4] On 18 April 2005 the learned Sessions Court judge ('SCJ') awarded the plaintiff damages for (1) false imprisonment ('tahanan salah') in the sum of RM10,500, (2) loss of reputation ('fitnah') in the sum of RM150,000, and (3) interest on damages at 8% per annum calculated with effect from date of summons to date of satisfaction.

Findings Of The Court

[5] At the outset it is noted that the onus on the defendants is a heavy one. In this appeal there is nothing to show that the SCJ's award of RM10,500 for false imprisonment was so extremely high as to make it an entirely erroneous estimate or that the SCJ had acted on wrong principle of law or took into consideration irrelevant matters or failed to take into account relevant matters (*Topaiwah v. Salleh* [1968] 1 LNS 161; *Mahmod Kailan v. Goh Seng Choon & Anor* [1976] 1 LNS 68; *KDE Recreation Bhd v. Low Han Ong & Ors* [2006] 1 CLJ 1097 CA). On the whole the court finds that the award of RM10,500 for false imprisonment is fair and reasonable (*Chong Fook Kam & Anor v. Shaaban & Ors* [1968] 1 LNS 23; *Tan Kay Teck & Anor v. The Attorney General* [1957] 1 LNS 84; *Kuan Kwai Choi v. Ak Zaidi Pg Metali* [1993] 3 CLJ 555).

[6] Turning to the award of RM150,000 for 'fitnah'. Learned counsel for the defendants contended that the plaintiff did not obtain leave to appeal for false imprisonment. The SCJ misdirected himself in fact and in law when he proceeded to assess the damages for false imprisonment. In fact the claim for false imprisonment was dismissed by the then trial SCJ. Further the Court of Appeal order dated 28 April 1999, dismissed the

plaintiff's application to appeal on false imprisonment and only allowed leave to appeal on the issue of whether the search complied with s. 62(2) and s. 62(3) of the Criminal Procedure Code. Further, the claim for 'defamation' was abandoned by the plaintiff's then counsel. Accordingly, the SCJ had acted outside of his power or exceeded his jurisdiction and was *functus officio* (*Hock Hua Bank Bhd v. Sahari Murid* [1980] 1 LNS 92; *Penang Port Commission v. Kanawagi Seperumanian* [2006] 2 CLJ 480; *Bandar Nilai Sdn Bhd v. Muthusamy Etti Arunchala Goudan & Ors* [2005] 5 CLJ 11; *Panglima Aces Sdn Bhd v. Highway Bricks Works (Serendah) Sdn Bhd* [2006] 3 CLJ 628).

[7] Learned counsel for the plaintiff submitted that the order for leave clearly states that the plaintiff is entitled to damages for trespass and all other consequential relief arising therefrom. The tort of trespass includes an action for damages for false imprisonment. Trespass and false imprisonment is pleaded in the statement of claim. The order granting leave also states that leave to appeal was granted in respect of trespass and the issue as to whether 'perayu tersebut adalah berhak ke atas ganti rugi dan relif lain bagi pencerobohan'. The final order of the Court of Appeal set aside the High Court order dealing with the three issues which inlcudes false imprisonment and trespass. The matter was remitted to the Sessions Court for assessment of damages 'yang layak diterima oleh perayu' together with interest and costs. Learned counsel also submitted that this includes loss of reputation, feelings, dignity and the like (*Sailajanand Pande, Appelant v. Suresh Chandra Gupta & Anor* AIR [1969] Patna 194; *State of Rajasthan v Rikhabchand* AIR [1961] Rajasthan 64; *Thompson v. M.P.C* [1998] QB 498). Learned counsel further submitted that when assessing damages for 'fitnah' the SCJ had considered matters such as the plaintiff's reputation which are claimable under the tort of false imprisonment. In this context 'Fitnah' is not defamation *per se* but for loss of reputation, dignity and other relief lawfully claimable under the heading of false imprisonment for the tort of trespass. The SCJ was bestowed with a discretion by the Court of Appeal which directed him to assess the damages 'yang layak diterima oleh perayu' after ruling that there was trespass. The award of RM150,000 by the SCJ is neither excessive nor unreasonable in the circumstances of the case. The amount of the damages is purely in the discretion of the SCJ and such discretion is not to be lightly interfered with, in appeal (*Rikhabchand*, *supra*).

[8] The court agrees with the submission of learned counsel for the plaintiff that the final order of the Court of Appeal had directed the SCJ to assess damages for false imprisonment which includes loss of reputation. However, in the process of assessing the damages for loss of reputation the SCJ had apparently acted on some wrong principle of law. In particular the SCJ cited *Karpal Singh a/l Ram Singh v. DP Vijandran* [2001] 3 CLJ 871, *Pang Fee Yoon v. Piong Kien Siong & Ors* [1999] 8 CLJ 383 and *Liew Yew Tiam & Ors v Cheah Cheng Hoc & Ors* [2001 2 CLJ 385. *Karpal Singh*, *supra* is a suit for defamation arising out of a press statement where the High Court awarded RM500,000 in damages. The Court of Appeal reduced the award to RM100,000 on the grounds that the trial judge had misapprehended the facts and was also influenced by the trend then prevailing. *Pang Fee Yoon*, *supra* is also a defamation suit arising from a statutory declaration affirmed by the defendant, a former partner of the plaintiff firm alleging fraud and unethical conduct on the part of the plaintiff. The High Court awarded RM300,000,00 for defamation. In *Liew Yew Tiam*, *supra* plaintiff sued on a libel arising from a letter containing allegations against their legal firm. The High Court awarded RM500,000, RM300,000, RM50,000 and RM150,000 against the four defendants respectively. On appeal the Court of Appeal held that the learned judge fell into error in making separate awards of damages against each defendant and substituted it with a global award of RM100,000. All abovementioned three cases relate to defamation and are plainly distinguishable on its facts and law. The court finds that the award of RM150,000 for loss of reputation is manifestly excessive. The SCJ had acted on wrong principle of law when he relied on the authorities cited by the plaintiff. Damages for false imprisonment includes damages for injury to liberty and injury to feelings. Injury to feelings is that indignity, mental suffering, disgrace or humiliation with any attendant loss of social status. It is another form of loss of reputation (McGregor on *Damages* 16th edn, at para 1850 & 1851; *Rikhabchand*, *supra*). Even where there has been no physical injury, substantial damages may be awarded for indignity, discomfort or inconvenience. Where liberty has been interfered with damages are given to vindicate the plaintiff's rights even though no pecuniary damages has been suffered (Clerk and Lindsell on *Torts* 17th edn, at 12-80). In *Sailajanand*, *supra* the plaintiff sued on false imprisonment brought about by a magistrate. The court is awarding damages of Rs1,000 made reference to

A McGregors on *Damages*. In *Rikhachand*, *supra* an award of Rs1,600 for loss of reputation was made. Accordingly the award of RM150,000 is set aside and substituted with an award of RM50,000.

B **[9]** On the issue of interest, learned counsel for the defendant submitted that the interest awarded is too high; in *Karpal Singh*, *supra* interest at only 4% was allowed. Interest is a matter of the court's discretion (item 7, Schedule Courts of Judicature Act, 1964; s. 11 Civil Law Act 1956; O. 42 r. 12 Rules of the High C Court 1980). On the total award of damages allowed in the sum of RM60,500 the court grants interest at 8% per annum calculated from the date of judgment (18 April 2005) until satisfaction.

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